

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Ultimate Medium Communications Corporation	)	IC No. 06-S0259328
	)	07-S0261304
	)	07-S0261306
Complaints Regarding	)	07-S0261591
Unauthorized Change of	)	07-S0265042
Subscriber's Telecommunications Carrier	)	07-S0265310
	)	07-S0265425
	)	07-S0265432
	)	07-S0265435
	)	07-S0265443
	)	07-S0265816
	)	07-S0266977
	)	07-S0266981
	)	07-S0268549
	)	07-S0270249

**ORDER**

**Adopted: June 8, 2007**

**Released: June 12, 2007**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints filed by Complainants'<sup>1</sup> alleging that Ultimate Media Communications Corporation (UMCC)<sup>2</sup> changed Complainants' telecommunications service providers without obtaining authorization and verification in violation of the Commission's rules.<sup>3</sup> We conclude that UMCC's actions did result in unauthorized changes in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>4</sup> Section 258 prohibits the practice of

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<sup>1</sup> See Appendix A.

<sup>2</sup> These complaints were originally served on Buzz Telecom, Inc. (Buzz). Buzz has sold all company assets, including trade names, and conveyed all rights to service and bill Buzz customers to UMCC Holdings, Inc.

<sup>3</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>4</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*; (continued....)

“slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.<sup>5</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>6</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>7</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>8</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>9</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of

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*Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>5</sup> 47 U.S.C. § 258(a).

<sup>6</sup> *See* 47 C.F.R. § 64.1120.

<sup>7</sup> 47 U.S.C. § 258(a).

<sup>8</sup> *See* 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>9</sup> *See* 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

all charges paid by the subscriber to the unauthorized carrier.<sup>10</sup> Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.<sup>11</sup>

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed to UMCC without Complainants' authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>12</sup> we notified UMCC of the complaints. UMCC has failed to respond to the complaints. The failure of UMCC to respond or provide proof of the verifications is presumed to be clear and convincing evidence of violations.<sup>13</sup> Therefore, we find that UMCC's actions resulted in unauthorized changes in Complainants' telecommunications service providers and we discuss UMCC's liability below.<sup>14</sup> We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional action may be necessary.

5. UMCC must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.<sup>15</sup> We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainants authorized carrier nor UMCC may pursue any collection against Complainants for those charges.<sup>16</sup> Any charges imposed by UMCC on the subscribers for service provided after this 30-day period shall be paid by the subscribers to the their respective authorized carrier at the rates the subscribers were paying to the respective authorized carrier at the time of unauthorized changes of telecommunications service providers.<sup>17</sup>

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<sup>10</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>11</sup> See 47 U.S.C. § 503.

<sup>12</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>13</sup> See 47 C.F.R. § 64.1150(d). These complaints were originally served on Buzz and Buzz has sold all company assets, including trade names, and conveyed all rights to service and bill Buzz customers to UMCC. See *supra* n.2. We note that UMCC did not file proper notice with the Commission prior to transferring Complainants' service from Buzz in violation of the Commission's slamming rules. See 47 C.F.R. § 64.1120(e)(1).

<sup>14</sup> If a Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

<sup>15</sup> See 47 C.F.R. § 64.1160(b).

<sup>16</sup> See 47 C.F.R. § 64.1160(d).

<sup>17</sup> See 47 C.F.R. §§ 64.1140, 64.1160.

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed by Complainants against Ultimate Media Communications Corporation ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainants' authorized carrier nor UMCC may pursue any collection against Complainants for those charges.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau

## APPENDIX A

INFORMAL COMPLAINT	DATE OF COMPLAINT	DATE OF SERVED NOTICE	AUTHORIZED CARRIER
06-S0259328	December 11, 2006	April 3, 2007	Verizon
07-S0261304	January 8, 2007	January 19, 2007	Verizon
07-S0261306	January 8, 2007	March 23, 2007	MCI
07-S0261591	December 26, 2006	March 23, 2007	Verizon
07-S0265042	December 18, 2006	March 23, 2007	Verizon
07-S0265310	January 29, 2007	March 23, 2007	Windstream
07-S0265425	December 18, 2006	February 14, 2007	
07-S0265432	December 26, 2006	February 9, 2007	
07-S0265435	December 27, 2006	February 13, 2007	Windstream
07-S0265443	December 26, 2006	February 22, 2007	
07-S0265816	January 12, 2007	March 23, 2007	
07-S0266977	December 14, 2006	March 23, 2007	MCI
07-S0266981	December 14, 2006	March 23, 2007	Verizon
07-S0268549	February 6, 2007	March 23, 2007	Verizon
07-S0270249	January 8, 2007	March 30, 2007	AT&T